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March 19, 1996

By-Hand

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Region II
290 Broadway, 17th Floor
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Re: Carroll & Dubies Superfund Site;
U.S. EPA Index No. II-CERCLA-95-0221

Dear Ms. Kivowitz:

This letter is submitted on behalf of Kolmar Laboratories, Inc. and Wickhen Products Inc. in response to the Federal Register Notice of February 13, 1996 (61 Fed. Reg. 5551) concerning a proposed de minimis administrative settlement with Reynolds Metals Company. We appreciate your assistance in providing certain documents and in extending the time for receipt of this submission to, and including, Tuesday, March 19, 1996. Kolmar and Wickhen have reviewed the materials submitted by Reynolds and the proposed Administrative Consent Order, which you were kind enough to provide. We believe that the proposed settlement is unfair and should not be adopted.

A. Reynolds' Own Information Indicates That Highly Concentrated Hazardous Substances Were Disposed

The information provided by Reynolds to EPA is conclusory, self-serving and incomplete. Little or no corroborative data have been supplied, and the information presented by Reynolds contains a number of inconsistencies and areas of incompleteness. For example, Reynolds extensively used methylethylketone ("MEK")

at its facility as part of its "inside spray" waste stream in 1976 and 1977, but has not included MEK as a waste component for 1978. Although Reynolds' July 28, 1995 letter asserts that "to the best of" its knowledge, it used a Glidden inside spray in 1978, no support for this assertion has been provided. In addition, Reynolds acknowledges that the Glidden product contains 37% by weight (non-water) ingredients (July 28 letter, at page 2). Reynolds attempts to minimize the significance of this high concentration of hazardous material through the Donaldson affidavit, sworn to May 3, 1995. The Donaldson affidavit is of dubious reliability. While the Donaldson affidavit asserts that the current inside spray used by Reynolds "never has a flash point of less than 140°" (¶ 8), the SCM MSDS, page 2, Section IV, states that the flash point is 124°F. This raises questions about the reliability of the information presented by Reynolds. Furthermore, the MSDS classifies the material as a combustible liquid, which contradicts Reynolds' efforts at explaining away its admission of the waste as "ignitible" in the DEC Right-to-Know Forms. Although Reynolds points to the post-1986 composition of the Glidden/SCM inside spray in an effort to suggest that the material is not hazardous, other information it submitted establishes that pre-1980 inside spray contained greater levels of VOCs/SVOCs. (See Reynolds' reference in ¶ 8 to the increase in flash point since "the mid-1980's" resulting from "reduced... VOC content of inside spray.") Furthermore, the suggestions in the Donaldson affidavit (¶ 6) to the effect that the "overspray" was in solid form (scraped from machines) is contradicted by the Reynolds admission that the ignitable inside spray waste (74.7 tons) was a liquid waste. Thus, the opinion by Mr. Donaldson at ¶ 9 of the affidavit that the "VOC content" of the inside spray waste product in 1978 was about 5% is, at best, strained.

Moreover, even if the total VOC content was reduced from 16% in the "virgin product" (Reynolds' July 28 letter at 2) to 5% (as the Donaldson affidavit opines), the resulting concentrations of VOCs are substantial. If one makes the simplifying assumption that the relative proportion of the three VOCs admitted by Reynolds to be hazardous remains constant, the resulting concentrations would be:

	Virgin Product	Factor	Waste Stream	
ethylene glycol	8%	5/16	2.5%	25,000 ppm
butyl alcohol	7.5%	5/16	2.3%	23,400 ppm
xylene	0.5%	5/16	0.16%	1,560 ppm
Total	16.0%		4.96%	49,960 ppm

While the Donaldson affidavit contends that VOCs would have volatilized both at the point of application and at the point of loading into 55 gallon drums, it is not established that those activities took place entirely open to the atmosphere (particularly recognizing that the 1970s flash point for inside spray was likely lower than in the post-1980 time period, as represented in the Reynolds (May 23, 1986) "Technical Data Sheet.") Note that the Reynolds Technical Data Sheet states that the application method is "airless spray," implying limited volatilization.

In addition to the admitted 5% VOC content, Reynolds' waste stream contained resins. These constituents may be a contributing factor to the characteristics of the Lagoon 7 sludge. As a result of both the high VOC content of 50,000 ppm admitted by Reynolds, and the high admitted resins content of the Reynolds wastes, it is not appropriate to deem the Reynolds waste as not contributing disproportionately to the site (Consent Order ¶ 15).

Based upon a number of court decisions, it appears that there is also a potential for certain aluminum manufacturing operations to produce chromium and other heavy metal wastes. See, Bell Petroleum Services, supra; U.S. v. Alcan Aluminum Corp., 964 F.2d 252 (3rd Cir. 1992); U.S. v. Alcan Aluminum Corp., 990 F.2d 711 (2nd Cir. 1993); and City of New York v. Exxon Corp., 766 F.Supp. 177 (S.D.N.Y. 1991). Accordingly, Kolmar and Wickhen are concerned that the aluminum manufacturing operations of Reynolds may have produced these wastes, and may have led to disposal of these wastes at the Carroll & Dubies site. While we do not suggest that the Reynolds operations were identical to those of the aluminum company discussed in the above cases, the potential for similar contamination should be investigated by EPA prior to any resolution of the proposed settlement.

B. Reynolds' Allocation Should Be Increased Because of Reynolds' Inaction

The proposed settlement indicates that the allocation for Reynolds is proposed to be 0.32%. This factor represents 17,935 gallons for Reynolds compared to 5,538,000 gallons for Kolmar and Wickhen. This volumetric basis for allocation is inappropriate. Reynolds has done nothing to facilitate remediation of the site. Reynolds' efforts have been limited to seeking to exculpate itself or minimize its exposure. EPA has the discretion to apply (and should apply here to increase Reynolds' share) the relative "degree of cooperation with Federal, State, or local officials to prevent any harm to the public health or the environment." This is one of the so-called "Gore factors" and represents a concept of fairness among PRPs that should be applied here. See, Bell Petroleum Services, Inc. v. EPA, 3 F.3d 889 at 899 (5th Cir. 1993). Based upon Reynolds' lack of participation in developing a solution for the site, and upon the admitted high concentrations of materials, including VOCs, sent to the site by Reynolds, a significantly increased allocation to Reynolds is required.

Equally troubling, EPA has focused solely on volume without regard to the toxicity of Reynolds' waste.

C. The Proposed Settlement is Inadequate

The proposed payment by Reynolds is inadequate, because EPA has failed to include total response costs in calculating the settlement. The proposed settlement is based on EPA costs for OU1 through May 17, 1995 only, almost one year ago, and would relieve Reynolds from responsibility for later EPA response costs. Reynolds should bear its equitable share of all EPA OU1 (and OU2) response costs, and the arbitrary May, 1995 cut-off should not be used. In addition, Reynolds should pay its equitable share of response costs that EPA avoided: the $1.3 million in site investigation costs for OU1 that EPA avoided by the actions of Kolmar and Wickhen. If Kolmar and Wickhen had not funded those studies, EPA would have incurred those or greater additional response costs. The proposed settlement rewards Reynolds for refusing to participate in funding of the site investigation costs and is thereby unfair to Kolmar and Wickhen.

All payments received from Reynolds, no matter how categorized by EPA, should be credited against the response costs that otherwise would be charged by EPA against Kolmar and Wickhen.

For the reasons set forth above and in our letter of May 30, 1995 (which is incorporated herein by this reference), Kolmar and Wickhen urge EPA to reject the proposed settlement, to investigate the matters described above, and to allocate significantly increased responsibility to Reynolds in consideration of Reynolds' wastes, and Reynolds' lack of cooperation. All monies received from Reynolds should reduce the EPA costs otherwise chargeable to Kolmar and Wickhen.

Respectfully submitted,

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